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# Habeas Corpus: Jurisdiction of Federal District Courts

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# NOTE

# HABEAS CORPUS: JURISDICTION OF FEDERAL DISTRICT COURTS

> [The Great Writ] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.
>
> *Jones v. Cunningham*
> 371 U.S. 236, 243 (1963)
> (Black, J., Opinion of the Court)

## INTRODUCTION

At one time, the writ of habeas corpus was a device whereby a court could inquire only into the physical restraint imposed by a court without jurisdiction or by an executive acting ultra vires. The scope of federal habeas corpus has now been greatly expanded, however, with the growth of the Fourteenth Amendment due process doctrines pursuant to the application of selected amendments of the Bill of Rights against the states, to review large parts of a state's criminal process. Today, the writ serves as a readily available avenue for collateral attack on constitutional defects in state criminal convictions where there is reason to believe that the initial conviction did not fairly protect individual interests.[1]

However, there is some doubt as to whether or not the writ is as available as one might think to provide complete and adequate relief despite the recent expansion of the importance of the writ. In multiple-sentence situations the petitioner may seek to attack future sentences with the writ of habeas corpus. Such access to the courts may be limited to a particular court because of the Supreme Court's interpretation of Title 28 §2241 of the United States Code which contains statutes providing for the federal writ

1. *Developments in the Law—Federal Habeas Corpus*, 83 HARV. L. REV. 1038, 1040-41 (1970).

of habeas corpus. The likely result is that the petitioner's relief may also be limited. The precise problem is whether the federal district court in the district of confinement or the federal district court in the district of conviction should have jurisdiction to hear habeas corpus petitions in cases of multi-state sentencing or mixed federal-state sentencing where the future unserved sentence has been imposed by a different jurisdiction.

## HISTORY

The exact origin of the writ of habeas corpus is not known but within a century after the victory by William in 1066, the writ was in general use in England.[2] The early function of the writ was simply to get a reluctant party, such as a defaulting defendant, into court in order that justice could be done.[3] In the fifteenth and sixteenth centuries the writ became a weapon in the power struggle among the courts. The common-law courts, in inter-court competition with inferior courts and other central courts, protected and expanded their jurisdiction by suing the writ to release persons held in custody by the other courts.[4] Early in the seventeenth century, according to Meador,

> [T]he writ of habeas corpus had evolved into an independent writ, not auxiliary to any other proceeding. It was a device whereby a court could inquire into the legality of detention and could order a discharge if the detention was found illegal. The writ has also become differentiated into several new forms. For constitutional history the most important was *habeas corpus ad subjiciendum,* used where the petitioner was held under a criminal charge.[5]

The words habeas corpus when used singly have been understood to refer to the common law writ of *habeas corpus ad subjiciendum* which was generally termed the "Great Writ" and it was in this sense that it was used in the United States Constitution.[6]

The British Parliament in 1679 passed the Habeas Corpus Act to remedy abuses by the King but the Act specifically excluded persons detained because of a criminal conviction, leaving such prisoners to resort to habeas corpus as developed at common law.[7]

The colonists in America laid claim to the writ of habeas corpus as a common law right of Englishmen probably because of tradition and the use of Coke's *Institutes* and Blackstone's *Com-*

2. R. SOKOL, FEDERAL HABEAS CORPUS 3 (2d ed. 1969).
3. *Id.* at 4.
4. *Id.* at 7, 8.
5. D. MEADOR, HABEAS CORPUS AND MAGNA CHARTA 12 (1966).
6. *Ex parte* Bollman, 8 U.S. (4 Cranch) 75, 95 (1807).
7. D. MEADOR, HABEAS CORPUS AND MAGNA CHARTA 26 (1966).

*mentaries* as the basic legal treatises in the colonies.[8] Until 1787, the writ of habeas corpus was mentioned in fewer than half of the State constitutions probably because the writ had become so well established; however, following ratification of the United States Constitution, which dealt with habeas corpus in the suspension clause, nearly all the States copied the federal provision in their constitutions.[9] The suspension clause as set forth in the United States Constitution is: "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."[10] Although the suspension clause does not affirmatively authorize issuance of the writ of habeas corpus, it has been suggested that the right to the writ is grounded in the clause, independent of any statute.[11] The Supreme Court in *Jones v. Cunningham*[12] stated that the suspension clause was the constitutional command that the writ of habeas corpus be made available.

The first Congress passed the Judiciary Act of 1789 which authorized federal courts to issue writs of habeas corpus to prisoners in custody under authority of the United States.[13] Thus, the writ was available in the federal courts *only* for inquiry into federal detention. This limitation remained until the Act of 1867 was passed extending the reach of the writ to prisoners in state custody.[14]

The growth of the writ following the Act of 1867 to its present scope is summarized by Meador in three main developments of constitutional law in the use of the writ by federal courts: (1) "the extension of the federal writ to persons held in state custody";[15] (2) "the gradual enlargement of the court's scope of inquiry into legality where confinement is under a final judgment of conviction;"[16] (3) "enlargement in the meaning given 'due process of law' and 'equal protection of the laws' in criminal proceedings."[17]

## JURISDICTION

The right of the writ of habeas corpus is implemented by a number of federal statutes. The basic statute setting forth jurisdiction states: "Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction . . ."[18]

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8. *Id.* at 30.
9. *Id.* at 32.
10. U.S. CONST. art. I, § 9.
11. R. SOKOL, FEDERAL HABEAS CORPUS 17 (2d ed. 1969).
12. Jones v. Cunningham, 371 U.S. 236, 238 (1963).
13. Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 73, 81-82.
14. Act of 1867, ch. 28, § I, 14 Stat. 385 (now 28 U.S.C. § 2241(c)(3) (1964)).
15. D. MEADOR, HABEAS CORPUS AND MAGNA CHARTA 55 (1966).
16. *Id.*
17. *Id.*
18. 28 U.S.C. 2241(a) (1964).

The question whether the words "within their respective jurisdiction" limit a district court's power to grant a writ of habeas corpus to petitioners detained within its territorial jurisdiction was presented in *Ahrens v. Clark*,[19] in 1948. In that case aliens were detained at Ellis Island, New York and sought to challenge by habeas corpus the legality of their detention in the District Court for the District of Columbia. Respondent moved to dismiss because petitioners were not confined in the District of Columbia. The District Court granted the motion and the Court of Appeals for the District of Columbia dismissed on appeal. The Supreme Court affirmed, holding that a district court is limited in its power to issue writs of habeas corpus to persons confined within its territorial jurisdiction.[20]

The Court based its decision upon what it regarded as the prevailing practice in the lower federal courts and cited eleven cases as a general view that their jurisdiction is so confined.[21] Yet, a review of the cases is inconclusive as to any common view.[22] The Court also relied upon the legislative history of the statute and what it regarded as the clear meaning of the phrase "within their respective jurisdiction."[23] However, it cannot be said that the language is clear for it does not purport to define jurisdiction literally in terms of the presence of the petitioner or for that matter, the presence of the custodian.[24] As such, it is not clear whether it is the petitioner, the respondent or both who must be within the jurisdiction. An interpretation more in line with the historical habeas corpus concept would require only the presence of the respondent who has custody of the petitioner to be within reach of district process.[25] Historically, the writ has been directed toward the jailer.[26] However, the lower federal courts subsequently have required the petitioner to be within the jurisdiction of the respective district court, citing *Ahrens*.[27]

In a parallel development, practical problems had evolved prior to 1948 in the administration of federal habeas corpus.[28] Prior to 1867, the common law concerning habeas corpus was that a conviction imposed by a court of general criminal jurisdiction was prima facie evidence that the confinement was legal. In 1867, Con-

19. Ahrens v. Clark, 335 U.S. 188 (1948).
20. *Id.* at 192.
21. *Id.* at 190.
22. 83 HARV. L. REV. *supra* note 1, at 1162, n. 49.
23. 335 U.S. at 191-2.
24. *Id.* at 201 (Rutledge, J., dissenting).
25. *Ex parte* Endo, 323 U.S. 283, 306 (1944).
26. D. MEADOR, HABEAS CORPUS AND MAGNA CHARTA 7 (1966). *See* 323 U.S. at 306 *citing In re* Jackson, 15 Misc. 417, 439-40.
27. *See, e.g.*, Hart v. Ohio Bureau of Probation and Parole, 290 F.2d 550 (6th Cir. 1961); Windisch v. United States, 295 F.2d 528 (1st Cir. 1961); Allen v. United States, 327 F.2d 58 (5th Cir. 1964); Booker v. Arkansas, 380 F.2d 240 (8th Cir. 1967).
28. R. SOKOL, FEDERAL HABEAS CORPUS 178 (2d ed. 1969).

gress changed the common law rule by extending the writ of habeas corpus to all cases where a person may be in custody in violation of the Constitution and provided for inquiry into the causes for detention.[29] As a result of these developments in the law there was a great increase eventually in the number of habeas corpus petitions filed in federal courts by state and federal prisoners.[30] Since the prisoners had to make application for habeas corpus in the district of confinement,[31] those districts in which federal penal institutions were located were overburdened with petitions.[32] In addition, some habeas corpus petitions raised questions of fact that could only be resolved by a hearing requiring the presence of officials, witnesses and records, all of which could be located some distance away.[33] Thus, to reduce these administrative difficulties, Congress in 1948 modified the Judicial Code to provide federal prisoners a statutory post-conviction remedy, this was 28 U.S.C. §2255,[34] which requires prisoners to seek relief in the court of conviction by applying by motion to vacate the judgment.

In *United States v. Haymen*,[35] the Supreme Court rejected arguments that the statute was an unconstitutional suspension of the writ and held that Section 2255 provided federal prisoners with a remedy equivalent to habeas corpus while correcting problems which had arisen in the administration of the writ.[36] As provided by statute, in the event Section 2255 procedure is "inadequate or ineffective to test the legality of his detention," a federal court in the district of confinement may entertain a petition for habeas corpus.[37] Nevertheless some courts refused to hear certain questions in Section 2255 proceedings.[38] The Supreme Court in *Kaufman v. United States*[39] set the record straight and made it clear that *all* constitutional questions could be heard in a Section 2255 proceeding.[40]

The *prematurity rule* was established by the Supreme Court in *McNally v. Hill* in 1934.[41] The Court refused to grant relief on habeas corpus to a prisoner attacking a consecutive sentence he had not yet begun to serve. After determining that the common

29. United States v. Haymen, 342 U.S. 205, 211 (1952). The case includes a history behind the enactment of section 2255.
30. *Id.* at 212.
31. 335 U.S. at 188.
32. 342 U.S. at 214.
33. Walker v. Johnston, 312 U.S. 275 (1941).
34. The full text of this provision is included in the appendix.
35. 342 U.S. 205 (1952).
36. *Id.* at 219.
37. 28 U.S.C. § 2255 (1964).
38. Warren v. United States, 311 F.2d 673 (8th Cir. 1963) (Illegal arrest and illegal search and seizure).
39. Kaufman v. United States, 394 U.S. 217 (1969).
40. *Id.* at 228.
41. McNally v. Hill, 293 U.S. 131 (1934).

law use of the writ was to enforce a right to immediate release from custody[42] and that the statute empowering the use of the writ did not indicate a legislative intent to broaden that relief,[43] issuance of the writ was authorized only to inquire into the cause of a present restraint of liberty.[44] A petition asserting the right to be released in the future was thus said to be premature.

The fall of the prematurity rule of *McNay* in *Peyton v. Rowe*[45] became the primary basis for territorial jurisdiction problems of district courts by allowing prisoners to attack collaterally sentences that would become operative in the future. The Supreme Court held that "a prisoner serving consecutive sentences is 'in custody' under any one of them for the purposes of section 2241 (c) (3)."[46] The Court was persuaded by the common usage of custody to describe the total time imprisoned and by the fact that the sentences would be lumped together for parole purposes. The prematurity rule of *McNally* was rejected on the grounds that an application of *McNally* in the context of *Peyton* would be at odds with a principal purpose of the writ which "is to provide for swift, judicial review of alleged unlawful restraints on liberty."[47] Since the factual hearing would not take place until the consecutive sentence was being served, memories and records would be stale, lessening the possibility of resolution of constitutional claims.[48] The Court also rejected immediate release from custody as the only remedy available in a habeas corpus proceeding. Its rejection was based upon the statute which does not deny the courts to fashion other appropriate relief[49] and by subsquent decisions which did allow such other relief.[50]

Thus *Peyton,* although only concerned with consecutive sentences imposed by the same jurisdiction, allowed a new class of habeas corpus petitioners to appear, viz., those that seek to challenge a restraint to be imposed at a later date by another jurisdiction. It is this group of petitioners that is faced with the possibility of less than adequate relief in habeas corpus proceedings because of the territorial jurisdiction limits set by *Ahrens.*

## POST-CONVICTION REVIEW

Whether the district court in the district of confinement or

42. *Id.* at 138.
43. Rev. Stat. § 753 (1874), *as amended* 28 U.S.C. § 2241(c)(3) (1964).
44. 293 U.S. at 138.
45. Peyton v. Rowe, 391 U.S. 54 (1968).
46. *Id.* at 67.
47. *Id.* at 63.
48. *Id.* at 62.
49. 28 U.S.C. § 2243 (1964).
50. *Ex parte* Hull, 312 U.S. 546 (1941); Jones v. Cunningham, 371 U.S. 236 (1963); Walker v. Wainwright, 390 U.S. 335 (1968).

the district court in the district of conviction is the proper forum depends upon a balancing of conflicting interests. The rule of *Ahrens* requires that a federal or state prisoner faced with a future state sentence in another jurisdiction petition the district of confinement.[51] In both cases, records, officials and witnesses would have to be transported to the district of confinement for a factual hearing. To do otherwise it is argued would result in greater administrative inconvenience with the transporting of a federal or state prisoner to the district of conviction in the sentencing state.[52] The argument cuts both ways. Is it not also a *heavy* administrative inconvenience to require the sentencing state in either case to transport records, officials, or witnesses to the district of confinement? The sentencing state has a primary interest in defending its conviction and sentence but it should not be required to defend its action in the federal district courts in the other forty-nine states. It would seem to be in the best interests of justice and administrative *convenience* to simply transport the prisoner to the district of conviction. Congress has made it clear that convenience lies in favor of the court in the district of conviction for both federal prisoners[53] and state prisoners.[54] Thus, it would seem that the balance would be in favor of the district of conviction.

As a result of *Peyton*, there are many multiple sentence combinations now open to attack by post-conviction review. The different federal and state sentence combinations and the avenues for post-conviction review available to each will be delineated and set forth below in order to fully understand which combinations are troublesome.

A. The State Prisoner — Adequate State Post-Conviction Hearing Acts. Such acts allow the state prisoner to petition the state court that convicted him for a hearing on claims of denial of state or federal constitutional rights and ask the court to vacate or set aside the sentence based upon said denial. The acts provide for appeal to the State Supreme Court.[55] North Dakota adopted the Uniform Post-Conviction Procedure Act, as amended, in 1969.[56] The statute provides that the application shall be filed with the clerk of court in which the conviction took place.[57] The statute also provides for a hearing[58] and review by the Supreme Court

51. 335 U.S. 188 (1948).
52. *Id.* at 191.
53. 28 U.S.C. § 2255 (1964).
54. 28 U.S.C. § 2241(d) (1966). This section provides for interstate transfer of an application for writ of habeas corpus. The ability to attack future sentences and the interstate transfer of applications was not known until Peyton v. Rowe in 1968.
55. *See* Case v. Nebraska, 381 U.S. 336 (1965) for discussion of Uniform Post-Conviction Procedure Act. North Dakota is one of eight states adopting the Act as of 1969.
56. N.D. CENT. CODE, ch. 29-32 (Supp. 1969).
57. N.D. CENT. CODE, § 29-32-03 (Supp. 1969).
58. N.D. CENT. CODE, § 29-32-07 (Supp. 1969).

of North Dakota.[59] The exhaustion requirements of 28 U.S.C. §2254(b) requires a petitioner to exhaust his state remedies before resorting to federal habeas corpus.[60]

B. The State Prisoner—Federal Habeas Corpus.

1. Collateral attack on in-state sentences, present and future: Where the states do not provide adequate post-conviction hearings or where petitioner has exhausted his state remedies, a petitioner in state custody pursuant to a judgment of a state court may file his petition for habeas corpus in either (a) the district court in the district of confinement, or (b) in the district court in the district of conviction. Section 2241(d) provides for *intrastate* transfer between the two districts of the application for the writ. These two courts have concurrent jurisdiction and one court may "in the exercise of its discretion and in the furtherance of justice" transfer a petition to the other for hearing.[61] Service of process presents no problem intrastate.

2. Collateral attack on out-of-state detainer[62] and future sentence: A petitioner in state custody attempting to vacate an out-of-state detainer or future sentence should seek a forum in the state of conviction in order to achieve complete relief. Because of the question of application of the *Ahrens* rule to territorial jurisdiction, the availability of a complete remedy depends on whether the federal district court in the sentencing state would follow *Ahrens* or a decision by the Fourth Circuit Court of Appeals that abrogates *Ahrens*.[63] Petitioner would file his application for habeas corpus pursuant to 28 U.S.C. §2241(1). A state prisoner with a future federal sentence is in custody for the purposes of Section 2241(c)(3) and may file a petition under Section 2255 to challenge that future restraint as a federal prisoner.[64]

C. The Federal Prisoner

1. Collateral attack on present and future federal sentences—Section 2255 proceeding: A petitioner in federal custody seeking post-conviction relief under Section 2255 "may move the court which imposed the sentence to vacate, set aside or correct the sentence."[65] In such a motion, the respondent will always

59. N.D. CENT. CODE, § 29-32-09 (Supp. 1969).
60. This provision is included in the Appendix.
61. 28 U.S.C. § 2241(d) (1964).
62. "A detainer is a writ or instrument authorizing a jailer to hold a prisoner on behalf of the state that issued it. At the completion of his sentence to one state, the prisoner will be turned over to the state which lodged the detainer against him." 83 HARV. L. REV. *supra* note 1, at 1164, n. 57.
63. Word v. North Carolina, 406 F.2d 352 (4th Cir. 1969).
64. Desmond v. United States Bd. of Parole, 397 F.2d 386 (1st Cir. 1968), *cert. denied*, 393 U.S. 919 (1968).
65. 28 U.S.C. § 2255 (1964).

be the United States. Section 2255 provides that the motion for relief may be made at any time.

2. Collateral attack on out-of-state detainer and future sentence—Federal habeas corpus: Section 2255 applies only to federal prisoners under federal custody.[66] A petitioner in federal custody attempting to vacate an out-of-state detainer or future sentence does so as a state prisoner and would be required to exhaust the state post-conviction remedies if any as required by section 2254(b) before resorting to federal habeas corpus.[67] Otherwise, petitioner would make application for the writ of habeas corpus in the federal district court in the sentencing state to achieve complete relief. Again, the availability of an adequate remedy depends upon whether that district court would follow *Ahrens* or a decision by the Second Circuit Court of Appeals that abrogates *Ahrens*.[68] Petitioner would file his petition pursuant to 28 U.S.C. 2241(a).

Thus, while post-conviction review provides adequate relief in most sentencing situations, there is still the question of whether or not a petitioner would be able to secure adequate relief in two important sentencing combinations, namely, a state prisoner and a federal prisoner petitioning for habeas corpus for collateral attack on out-of-state detainer and future sentence. In the following analysis, it will be demonstrated how the courts have handled these two sentence aggregations in an endeavor to promote justice and conclude that the proper forum is in the district of conviction in the sentencing state and that adequate relief may thereby be achieved.

## COLLATERAL ATTACK ON OUT-OF-STATE DETAINER AND FUTURE SENTENCE

A. *A state prisoner petitioning for habeas corpus for collateral attack on out-of-state detainer and future sentence.*

In *Word v. North Carolina*,[69] prisoners Word, Matthews and Williams were serving sentences imposed by the State of Virginia. During the course of confinement in Virginia, each was delivered to North Carolina to stand trial for another offense, convicted, sentenced and returned to Virginia to complete the remainder of his sentence. North Carolina lodged a detainer with the Virginia authorities against each of the prisoners.

The prisoners sought habeas corpus relief to challenge the constitutionality of the North Carolina sentences. Williams sought relief

66. *Id.*
67. Lewis v. New Mexico, 423 F.2d 1048 (10th Cir. 1970). *See* appendix for § 2241(d).
68. United States *ex rel.* Meadows v. New York, 426 F.2d 1176 (2nd Cir. 1970).
69. 406 F.2d 352 (4th Cir. 1969).

in the United States District Court for the Eastern District of North Carolina, while Word and Matthews brought their actions in the Eastern District of Virginia.

The prisoners' petitions were dismissed by the respective district courts in which they were filed. On appeal, the Fourth Circuit Court of Appeals consolidated the cases and held that (1) federal habeas corpus did provide a present remedy for the state prisoners in light of the Supreme Court's affirmance of *Peyton* and (2) that the proper forum would be the district within the state where a proper respondent would be available, i.e., the sentencing court. As a result, the Fourth Circuit affirmed dismissal of two petitions by the Virginia district court and vacated the dismissal of Williams' petition and remanded to the North Carolina district court for further proceedings.[70]

The possibility that a habeas corpus petition could be brought by a state prisoner to challenge a future sentence of a foreign state has existed only since the decision of *Peyton v. Rowe*.[71] But in *Peyton*, the Supreme Court was dealing with consecutive sentences imposed by the *same* court.[72] To extend *Peyton* to prisoners attacking detainers and unserved sentences in another state the Fourth Circuit attempted to tie the detainer and the proper North Carolina respondent with the peitioner's immediate confinement by adopting the "dual authority" fiction.[73] The Court reasoned that since the detainer had sufficient adverse affect on petitioner's current imprisonment because of the effect on his present nature of confinement and later parole, the petitioner could be considered to be in custody under the future sentences. Because of the impact of the detainer on the level of custody in which the petitioner was held in Virginia, the warden's authority to detain the petitioner is twofold. The custody requirement of section 2241 (c) (3) is met by the assertion that the warden's authority to hold a prisoner against whom a detainer has been filed stems from the Virginia commitment as well as from the North Carolina detainer.[74] The court further reasoned that to the extent the petitioner is held under the detainer, the warden is acting for North Carolina and for all practical purposes and in the context of an attack upon the detainer, the petitioner is in the custody of North Carolina and therefore, the proper official to name as respondent would be North Carolina's Attorney General.[75]

Once the Fourth Circuit handled the proper respondent obstacle,

70. *Id.* at 361-62.
71. 391 U.S. 54 (1968).
72. 406 F.2d 352 (4th Cir. 1969).
73. *See* discussion *infra*.
74. Word v. North Carolina, 406 F.2d 352 (4th Cir. 1969).
75. *Id.* at 357.

it evaluated the alternatives for each forum and found that the proper forum to file the petition would be the district court in the sentencing state. Recognizing that both the sentencing state and the state of confinement afford appropriate forums, the court felt that any petition in the confining court would result in less than complete relief. If the foreign state does not defend voluntarily and the court is unable to obtain jurisdiction over the proper authorities, the district court in the confining state would be reluctant to entertain a hearing with only the confining authority at hand.[76] At best, the court felt that a district court could only proceed against the warden and direct the warden to give no effect to the detainer.[77] If petitioner is attempting to avoid the future sentence altogether, such relief is only *limited*. The court did not regard the *Ahrens* mandate as an obstacle to its conclusion that the action should be brought in the district court in the sentencing state. It noted that subsequent to *Ahrens* the Supreme Court had affirmed the issuance of the writ in several cases where petitioner was not present in the district where the writ was sought.[78] The *Word* court thus felt that the physical presence of the petitioner within the district was not an invariable jurisdictional requirement and that the *Ahrens* meaning given to the words "within their respective jurisdiction" in 28 U.S.C. §2241(a) must give way to other considerations of fairness and strong convenience.[79] The court also relied upon the enactment of 28 U.S.C. §2255 as evidence of congressional reaction to similar problems with respect to federal prisoners and forecast that because of the good experience under section 2255 Congress would respond similarly with respect to state prisoners.[80]

In summary, the *Word* court reasoned that subsequent cases and legislation stands for the proposition that the location of the petitioner is not determinative where departure from *Ahrens* is compelled by administration of justice.

B. *A federal prisoner petitioning for habeas corpus for collateral attack on out-of-state detainer an future sentence.*

In *United States Ex Rel. Meadows v. New York*,[81] Meadows was convicted for petit larceny, assault and three counts of robbery in County Court of Suffolk County, New York, and received a 10-20 year sentence in 1958. His leave to appeal was denied. Meadows

76. *Id.*
77. *Id.* at n. 6.
78. Hirota v. MacArthur, 38 U.S. 197 (1948) (outside the boundaries of United States); Carbo v. United States, 364 U.S. 611 (1961) (outside district); Jones v. Cunningham, 371 U.S. 236 (1963) (leaving district after proceedings begun).
79. 406 F.2d at 359.
80. *Id.* at 360.
81. 426 F.2d 1176 (2nd Cir. 1970).

was paroled in 1965 after serving 8 years of his sentence. In 1966, the New York State Board of Parole filed a parole detainer with the federal authorities after his involvment in two bank robberies. In June, 1967, Meadows entered a plea of guilty to two charges of bank robbery in Federal District Court for the Eastern District of New York and received two concurrent 14-year sentences and is serving these sentences in the federal penitentiary in Atlanta, Georgia. In October, 1968, Meadows petitioned for a writ of habeas corpus in the District Court for the Northern District of Georgia, the confinement district, challenging the parole detainer and New York sentence of the County Court of Suffolk County. The petition was transferred to the Eastern District of New York, the federal district within which Meadows' state trial took place. Relief was denied on grounds that Meadows was not in custody under the State conviction and failure to exhaust State court remedies. Affirming on other grounds, the Second Circuit held that the district court of the district within which petitioner had been sentenced had jurisdiction over the habeas corpus petition.[82]

After dispensing with the exhaustion issue,[83] the Second Circuit easily handled the custody issue by citing for the proposition that a prisoner serving consecutive sentences is "in custody" under any one of them for the purposes of Section 2241 (c) (3).[84] The *Meadows'* court discarded any distinction between consecutive sentences being imposed by either the same or by different jurisdictions without any resort to a fiction as in *Word.* The court felt prompt adjudication was compelling in either situation and that the parole detainer had sufficient effect on custody to render the remedy of habeas corpus available.[85] The court then faced the jurisdiction issue since jurisdiction over the appeal depended upon the jurisdiction of the district court below.

The precise issue was whether the District Court in the Eastern District of New York, the sentencing district, had jurisdiction over Meadows' collateral attack on a New York conviction, despite Meadows' present confinement in the State of Georgia. The Second Circuit held that the district court had jurisdiction.[86]

In arriving at the decision, the *Meadows* court reasoned that while the *Ahrens* decision was presented in general terms and appeared to apply to all petitioners, there was no need for the *Ahrens* court to speak of any specific limitation.[87] Further, at

82. *Id.* at 1179.
83. *Id.* The court was of the view that because Meadows had presented all his constitutional claims in a writ of error *coram novis* and had appealed the denial of the motion, he had exhausted all available state remedies.
84. *Id.*
85. *Id.*
86. *Id.* at 1181.
87. *Id.*

that time, *McNally* controlled and the only class of petitioners that existed were those that could employ the writ to challenge a present restraint. Thus, despite the general terms, *Ahrens* could only apply to that class of petitioner that existed at that time.[88] Since the Supreme Court had overruled *McNally* in *Peyton*, a new class of habeas corpus petitioners had emerged, such as Meadows, seeking to challenge a restraint to be imposed at a later date by another jurisdiction.

The issue then before the Second Circuit in deciding *Meadows* was whether to extend *Ahrens* to the new class of petitioners. The court noted that the *Ahrens* court had based its decision in part on a broad consideration of policy, namely, the risk and expense of transporting prisoners long distances to appear in the sentencing court, but that three years later in *Haymen*, the risk "did not loom as large" to the Supreme Court when it was considering the Section 2255 proceeding as a form of habeas corpus proceeding.[89] The *Meadows* court seized upon the Supreme Court's use of considerations in favor of the sentencing court in Section 2255 proceedings to bolster its argument not to extend *Ahrens*, e.g.: (1) the records and witnesses are located in the sentencing state, (2) to require prisoners to proceed in the district of confinement would emasculate *Peyton* and (3) that jurisdiction confined to the district of confinement also prejudices the respondent for it is the sentencing state that is interested in the challenge to its conviction and sentence.[90]

The Court also alluded to enactments of 28 U.S.C. § 2255 and 28 U.S.C. §2241 (d) as determinative of congressional intent in favor of the sentencing state.[91]

Based on the foregoing balance in favor of the sentencing court, the *Meadows* court did not consider it advisable to extend *Ahrens* to this case.[92] However, the Court stated that the district of confinement retained concurrent jurisdiction and where the petitioner challenges the *present* prejudicial effects of a detainer that such a district might be the proper forum.[93] Finally, the district court in the district of confinement could use 28 U.S.C. §1404(a) and §1406(a), venue, to transfer the petition for habeas corpus filed therewith to the district court in the sentencing state "in the interests of justice."[94]

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88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.* at 1182, n. 3. Section 2255 provides that the appropriate forum is the district of conviction; Section 2241(d) provides for interstate transfer; in addition, note 3 states: "The judicial districts with federal penitentiaries within their boundaries should not be required to consider and decide all collateral attacks on out-of-state parole detainers."
92. 426 F.2d at 1183.
93. *Id.* at n. 8.
94. *Id.* at n. 9.

C. *A state prisoner petitioning for writ of habeas corpus for collateral attack on present impact of out-of-state detainer.*

In *Nelson v. George*,[95] George was convicted on a plea of guilty in a California court of first degree robbery in 1964. At the same time, a detainer was filed by North Carolina. While serving his 5-year sentence at San Quentin, he was released to North Carolina authorities to stand trial, was convicted and sentenced in 1967 to imprisonment of 12 to 15 years and returned to California to complete his sentence. In April 1967, North Carolina filed another detainer with San Quentin. George subsequently filed a petition for habeas corpus in the United States District Court for the Northern District of California to attack his North Carolina conviction. The District Court in March, 1968 denied the application relying upon *McNally*. George petitioned for rehearing arguing that the detainer affected his custodial classification and his probability of parole. The District Court denied the petition for rehearing and George appealed to the Court of Appeals for the Ninth Circuit. During the interim the Supreme Court decided *Peyton*. The Court of Appeals held that the District Court had jurisdiction to consider the impact of the detainer.[96]

The Supreme Court affirmed,[97] holding that the District Court had jurisdiction to consider George's petition *only* after he exhausted his remedies in the California courts. Petitioner was challenging the present effect of the detainer on the custody given by the California authorities. The Court noted that since the Full Faith and Credit Clause of the United States Constitution does not require California to enforce the detainer in any way until the obligation to extradite matures, California should be able to consider what present effect will be given to the detainer in relation to the petitioner's present custody, if any. As such George had not met the requirement of exhaustion of state remedies in California courts.[98]

The Court did not have to meet the territorial jurisdiction issue as presented in *Word* and *Meadows*. The Court recognized the problem, however, via dicta,[99] and reserved judgment to reconsider *Ahrens* in light of changed circumstances brought about by *Peyton*. More significantly, the Supreme Court noted that while federal prisoners may challenge in the federal court of conviction because

95. Nelson v. George, 399 U.S. 224 (1970).
96. George v. Nelson, 410 F.2d 1179 (9th Cir. 1969).
97. 399 U.S. 224 (1970).
98. *Id.* at 229, n. 6. The exhaustion requirement of 28 U.S.C. § 2254(b) is set forth in the appendix. If George again challenges his North Carolina conviction but in the district of conviction in North Carolina, he would at least be in a circuit that embraces the sentencing court as the proper forum, 406 F.2d 352 (4th Cir. 1969).
99. 399 U.S. at 228, n. 5.

of 28 U.S.C. §2255, the federal statutory scheme does not afford state prisoners that remedy in reference to the multi-state problem.[100] The Court concluded:

> "The obvious, logical and practical solution is an amendment to Section 2241 to remedy the shortcoming which has become apparent following the holding in *Peyton v. Rowe*. Sound judicial administration calls for such an amendment."[101]

## CONCLUSION

The Supreme Court in *George* calls for an amendment to Section 2241. It is clear that such revision is needed. However, with emphasis directed at legislative amendment, does the Court suggest the lower courts wait for Congress to act? If the Supreme Court in *Peyton* had interpreted congressional intent correctly, it would seem that by necessity a new interpretation of *Ahrens* and Section 2241 would be logical and intended by Congress. If such interpretation involves a vague, ambiguous phrase which "in their respective jurisdiction" arguably is, it would be appropriate for the court to expand jurisdiction judicially. The courts need not wait for Congress. It would appear that district courts in the district of conviction could claim jurisdiction of applications for writ of habeas corpus in such cases as *Word* and *Meadows* by such interpretation of *Ahrens* in light of *Peyton*.

Essentially, as the writ of habeas corpus has evolved, the purpose has been to provide efficient, swift post-conviction review of allegedly unconstitutional detention. If the courts are faced with a situation that would in essence abrogate the purpose of the writ by leaving one in prison without a remedy, the court may properly disregard certain habeas corpus doctrines unresponsive to the needs of the law in its present state of development and thereby continue the integrity and vitality of the *'Great Writ'* as the guardian of individual liberty.

That is exactly what the courts have done in *Word* and *Meadows* and it would seem that until Congress amends Section 2241, every

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100. While the Court makes reference to only state prisoners, it by necessity includes both state and federal prisoners who challenge future state convictions. One must keep in mind that when a federal prisoner challenges an unserved out-of-state sentence he challenges as a state prisoner and must use habeas corpus. Section 2255 applies only to federal prisoners serving under federal sentences.

101. 399 U.S. at 228, n. 5. Such an amendment to Section 2241 might read as Section 2241(e) (modeled after § 2241(d):

> Where an application for writ of habeas corpus is made by a person in custody under judgment and sentence of one State court or a Federal District Court but where the person seeks to challenge a judgment and future sentence of an out-of-state court, the application may be filed in the federal district court for the district within which the out-of-state court was held which convicted and sentenced him.

petitioner as discussed herein would be able to achieve complete relief with habeas corpus petitions in Federal District Courts in the district of conviction.

BARRY T. OLSON

## APPENDIX

1. The Suspension Clause.

United States Constitution, Article I, Section 9, Clause 2:

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.

2. The Habeas Corpus Provision of the Judiciary Act of 1789 (1 Stat. 73, 81-82).

SEC. 14. **And be it further enacted.** That all the before-mentioned courts of the United States, shall have power to issue writs of **scire facias, habeas corpus**, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of **habeas corpus** for the purpose of an inquiry into the cause of commitment.—Provided, that writs of **habeas corpus** shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

3. The Act of 1867 (14 Stat. 385).

CHAP. XXVII.—An Act amendatory of "An Act to amend an Act entitled 'An Act relating to Habeas Corpus, and regulating judicial Proceedings in certain Cases,' " approved May eleventh, eighteen hundred and sixty-six.

**Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,** That whenever in any suit or prosecution which has been or may be commenced in any State court, and which the defendant is authorized to have removed from said court to the circuit court of the United States, under and by virtue of the provisions of "An act relating to habeas corpus, and regulating judicial proceedings in certain cases," approved March third, eighteen hundred and sixty-six, and all the acts necessary for the removal of said cause to the circuit court shall have been performed, and the defendant in any suit shall be in actual custody on process issued by said State court, it shall be the duty of the clerk of the said circuit court of the United States to issue a writ of habeas corpus cum causa; and it shall be the duty of the marshal, by virtue of the said writ of habeas corpus, to take the body of the defendant into his custody to be dealt with in said circuit court according to rules of law, and the orders of the said court, or of any judge thereof in vacation; and he shall file a duplicate copy of said writ of habeas corpus with the clerk of the State court in which said suit was commenced, or deliver said duplicate to the clerk of said court; and all attachments made, and all bail and other security given in any suit or prosecution which has been or shall be removed from any State court to the circuit court of the United States, in pursuance of law, shall be and continue in like force and effect as if the same suit had proceeded to final judgment and execution in the State court.

4. FEDERAL STATUTES, 28 U.S.C. (1964)

§2241. Power to grant writ.

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may

decline to entertain an application for a writ of habeas corpus and may transfer the application for a hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination . . .

§2254. State custody; remedies in Federal courts.

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the constitution or laws or treaties of the United States.

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented . . .

§2255. Federal custody; remedies on motion attacking sentence.

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was

in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the subject to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

§1404. Change of venue.

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature of any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) As used in this section, "district court" includes the United States District Court for the District of the Canal Zone; and "district" includes the territorial jurisdiction of the court . . . .

§1406. Cure or waiver of defcts.

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) If a case within the exclusive jurisdiction of the Court of Claims is filed in a district court, the district court shall, if it be in the interest of justice, transfer such case to the Court of Claims, where the case shall proceed as if it had been filed in the Court of Claims on the date it was filed in the district court.

(d) As used in this section, "district court" includes the United States District Court for the District of the Canal Zone; and "district" includes the territorial jurisdiction of that court . . . .